

No credit shall be given a claimant unless the claimant shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

March 1, 2000

Dear Xxxxx:

This letter is in response to your letter dated February 1, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

You recently received a request for guidance on a sales tax issue from COMPANY. They sent us your response. BUSINESS is the vendor they named in their inquiry. We are also eager to have this matter settled, and want to do everything possible to be fair to our customer. However, the sales tax they wish to have refunded applies to invoices dating back to October, 1996. At that time they did not present us with a valid Resale Certificate. What they did give us was a letter stating that these were taxable sales. We taxed them accordingly. The Resale Certificate they sent us at the time of the refund request is dated 10-12-99.

To further complicate matters we have recently undergone an audit for the time period in question. Because of this, it is our understanding that we can not file a claim for credit. Since we have already been audited for that period, we were told by the Department of Revenue that we would have to amend all those tax returns.

My question to you would be, are we not required to charge sales tax if we are not given a Resale Certificate at the time of the sale? Next, what are we to do three years later, when they give us a Resale Certificate? Since we have been audited for that time, does that preclude us from filing a claim for refund? We would like to be of assistance to COMPANY however amending returns over a three year period would be quite costly.

We will wait for your response. I hope that you can direct us in such a way that is both beneficial to COMPANY and feasible for us.

If there are any questions concerning this please call me. My number is #####.

Generally, if a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for

March 1, 2000

credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of the tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See the enclosed copy of 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b). Taxpayers should not make adjustments on their next return.

At the time of sale when you have no indication that a sale is not taxable, you are required to collect and remit tax. However, if a customer later presents valid documentation that a sale was not taxable you may, but you are not required to, refund the amount of tax that was paid and file a claim for credit with the Department. See the enclosed copy of 86 Ill. Adm. Code 130.1405 for information regarding valid certificates of resale. Please note that if the claim is made after the statute of limitations expires, the claim will be denied. The statute of limitations for filing claims for credit is described in Section 130.1501(a)(4). The language is somewhat confusing but, boiled down, it means that the statute of limitations is 3 to 3 1/2 years and expires in 6 month blocks. For example, on July 1, 1994, the statute of limitations expired for claims to recover taxes that were erroneously paid in the first 6 months of 1991. Please note that claims for October of 1996 are out of statute.

It is important that you note that under Illinois sales tax laws, retailers are not required to file claims for credit. Further, the Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.